IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6246 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VALABHAI MORARBHAI KHALASI FATHER OF DETENU SHILABEN WD/O
Versus
COMMISSIONER OF POLICE

Appearance:
MR NM KAPADIA for Petitioner
MR HL JANI LD. APP for the Respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 18/02/2000

ORAL JUDGEMENT

This Special Civil Application is directed against the order dtd.16th July, 1999 passed by the Police Commissioner, Surat City, whereby the detenu namely Smt. Shilaben widow of Tarun Dahyabhai was detained under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985. The petition has been filed by the father of the detenu namely Valabhai Morarbhai Khalasi, aged about 75 years. The detenu is detained in the Central Jail, Sabarmati, Ahmedabad.

2. The grounds enclosed with the detention order show that the detenu was found to be involved in four criminal cases under Bombay Prohibition Act during the period 1998-99. The detenu was found to be in possession of 30 litre of unauthorised liquor in plastic containers on 6th March, 1998 for which a case under the Prohibition Act was registered at C.R. NO.138/98 at Athwa-lines Police Station. Yet another case on 18th July, 1998, she was found to be in possession of 120 litres of unauthorised liquor in plastic containers for which a case under Prohibition Act was registered against her at C.R. No.345/98 at Athwa-lines Police Station, for which chargesheet was filed in the Court on 16th August, 1998. In third case she was again found to be in possession of 120 litres of unauthorised liquor in plastic containers on 27th August, 1998 for which a case under Prohibition Act was registered against her at C.R. NO.405/98 at Athwa-lines Police Station and chargesheet was filed in the Court on 30th August, 1998, to which reference has been made in the grounds of detention is dtd. 9th June, 1999 wherein she was found in possession of 270 litre of unauthorised country made liquor in 22 plastic containers for which a case at C.R. NO.438/99 under the Prohibition Act, was registered at Umara Police Station for which chargesheet was filed on 19th June, 1999 in the Court.

3. All the four criminal cases as aforesaid are pending in the Court. Besides these, the incidents dtd. 14th April, 1999 and 16th May, 1999 have also been referred wherein the witnesses have deposed against the petitioner's threatening and criminal activities. The witnesses also requested that their identity be kept secret and accordingly the detaining authority has invoked Sec.9 (2) of the Gujarat Prevention of Anti-social Activities Act, 1985. The detaining authority has also been observed that other measures as contemplated under the Act are not found to be sufficient to deter the detenu from continuing her criminal activities and that it was necessary to detain her.

4. Learned counsel for the petitioner submitted that even if the grounds as set out in the detention order are taken to be correct on their face value they do not constitute a case of breach of public order. Learned A.P.P. MR. Jani failed to show as to how the activities of the detenu as aforesaid can be said to constituted a case of threat to the public order.

5. I find that as per the settled legal position, the activities as alleged against the detenu can at the most form a case of breach of law and order and the ingredients of the breach of public order are wanting in the instant case. The detention order, therefore, cannot be sustained in the eye of law. Accordingly the detention order dtd. 16th July, 12999 is hereby quashed and set aside. It is directed that the detenu Smt. Shilaben wd/o. Tarun Dahyabhai, who is at present in Central Jail, Sabarmati, Ahmedabad, to be detained is ordered to be released forthwith if not required under any detention order or in any other criminal case. This Special Civil Application is allowed. Rule is made absolute.

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